



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

June 21, 2012

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

Ms. Kit Douglass  
Staff Counsel  
Public Employees for Environmental Responsibility  
2000 P Street, NW  
Suite 240  
Washington, DC 20036

RE: Freedom of Information Act Request HQ-FOI-01158-12

Dear Ms. Douglass:

This is a response to your Freedom of Information Act (FOIA) request dated April 5, 2012 for records pertaining to Hazard Ranking System information. Specifically, all ten EPA regions have searched for responsive records associated with sites that have been deferred to RCRA or deferred to state cleanup programs from October 1, 2006 through April 18, 2012. The regions were requested to provide: the Site Decision Form 9100-3 (or an equivalent document); the latest scoring sheet relied on for the decision; the report(s) used as the basis for the "decision document" (e.g., the latest site assessment report); the RCRA/Superfund Deferral Form (or equivalent); and the Other Cleanup Activities Deferral Form (or equivalent). Based on our prior conversation with you, we believe that this information is the higher priority information from your FOIA request.

Attached is a spreadsheet with the list of 181 sites and 636 records provided by EPA regional offices in response to this request. The information has been redacted for personally identifiable information and specific drinking water well locations. These records were provided to you starting on May 21 and completed on June 20, 2012.

There are two HRS scoring sheets that we are withholding because disclosure would harm an interest protected by Exemption 5 – deliberative process privilege. The HRS scoring sheets are from: ORD093476109 "Armstrong World Industries" and ORD981771223 "Port of St. Helens Creosote Site." However, other documents from these two sites are being provided. You may appeal this denial to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address

USEPA SF



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your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the RIN listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

After you have had a chance to review the information provided, we are available to discuss the scope of the FOIA request especially since it involves significant effort from site assessment professionals in lieu of their efforts to conduct and complete important site assessment work.

Please do not hesitate to contact Doug Ammon at 703-347-8925 if you have any questions or want to schedule a meeting on the concerning the FOIA scope.

Sincerely,



Phyllis Anderson, Acting Director  
Assessment and Remediation Division  
Office of Superfund Remediation and Technology Innovation

Attachment

Cc:

Doug Ammon

Randy Hippen

**OFFICE OF SOLID WASTE AND EMERGENCY  
RESPONSE**

**FREEDOM OF INFORMATION ACT REQUEST  
HQ-FOI-01158-12**

**REQUESTER:** Kit Douglass

**Request Date:** April 05, 2012

**COMPANY:** PEER

**Received Date:** April 19, 2012

**FEE Category:** Other

**Subject:** requesting a copy of national records regarding the hazard ranking system (HRS) scores of sites evaluated under the CERCLA (request sent to Regions 1-10)

**Due Date:** May 17, 2012

**ASSIGNMENTS:**

OSWER

4-26-2012 Assigned to OSRTI

**SPECIAL INSTRUCTIONS:**

\* 04/19/12 per Larry Gottesman, Headquarters OSWER Doug Ammon (703-347-8925) is the Agency Lead Responder.

\* Regions 1-10 will provide input to Mr. Ammon.

\* Fee Waiver request: Granted

IF COSTS ARE EXPECTED TO  
EXCEED \$25.00, CONTACT  
REQUESTER FOR PAYMENT  
COMMITMENT BEFORE  
PROCESSING REQUEST.

FS:



Public Employees for Environmental Responsibility

RECEIVED  
APR 19 2012

HQ-FBI-01158-12

2000 P Street, NW • Suite 240 • Washington, D.C. 20036 • 202-265-PEER(7337) • fax: 202-265-4192  
e-mail: info@peer.org • website: www.peer.org

April 5, 2012

Regional Freedom of Information Office  
U.S. EPA, Region 1 (OARM01-6)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Post-It® Fax Note	7671	Date	# of pages 3
To	ORIGINAL	From	
Co./Dept.	MA	Co.	
Phone #	US MAIL	Phone #	
Fax #		Fax #	

RE: FOIA REQUEST

VIA FAX & FIRST CLASS MAIL

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests records regarding the hazard ranking system ("HRS") scores of sites evaluated under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). 40 C.F.R. 300.425(c)(1). Specifically, we request the following:

1. The HRS scores and scoring sheets for sites within your region, prepared by the Environmental Protection Agency (EPA), its contractors, or any other entity to which EPA delegated HRS scoring, which have been reviewed but not listed as National Priority List (NPL) sites for the past 5 years, including all RCRA sites not listed as NPL sites, due to the RCRA deferral policy; and
2. Any decision documents reflecting the "final" decision not to list any of the sites described above, including the articulated position of the state on proposed listing as well as the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites, and the rationale for the decision not to list.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

"The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or



because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA."

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of *Vaughn v. Rosen* (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a)(4)(A)):

*1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.*

The FOIA request is, by its terms, limited to identifiable activities of EPA and its employees, contractors, or designees.

*2. For the disclosure to be "likely to contribute" to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.*

The requested material consists of documents containing EPA's review and ranking of hazardous sites and decision documents relating to listing under CERCLA. As such, the requested records are the most meaningful documents that could be requested on EPA's treatment of these sites.

*3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.*

The general public has a keen interest in any factor bearing on the public health. As the underlying subject matter of this request concerns sites subject to inspection for hazardous waste, the public has an acute interest in ensuring that the sites are properly remediated.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

**Fw: PEER FOIA - R10**

Monica Lindeman to: Ken Marcy, Joanne Labaw  
Cc: Sylvia Kawabata

05/17/2012 07:32 AM

Ken and Joanne,

FYI

Monica.

PS. Armstrong World Industries - former site file name was ~~Owens-Corning~~ Fiber Glass Corp

----- Forwarded by Monica Lindeman/R10/USEPA/US on 05/17/2012 07:23 AM -----

From: Sylvia Kawabata/R10/USEPA/US  
To: Doug Ammon/DC/USEPA/US@EPA  
Cc: lindeman.monica@epa.gov, Brandon Perkins/R10/USEPA/US@EPA, opalski.dan@epa.gov, Jana Schneider/R10/USEPA/US@EPA, Bob Hartman/R10/USEPA/US@EPA  
Date: 05/16/2012 10:58 AM  
Subject: Re: PEER FOIA - R10

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Doug -

This is to let you know that we have completed uploading our documents to the ESC Portal for the 7 sites in R10. We have provided the requested records for all of the 7 sites, except for 2 sites. We are withholding 2 documents as follows:

ORD093476109 Armstrong World Industries, HRS Score Sheet

ORD981771223 Port of St. Helens Creosote Site, HRS Score Sheet

Our basis for withholding these documents are: Exemption 5 - deliberative process privilege

If you have any questions about our FOIA response and/or the documents we are withholding, please give me a call.

Sylvia Kawabata, Manager  
Assessment and Brownfields Unit  
Office of Environmental Cleanup  
EPA - Region 10  
206-553-1078 - desk  
206-331-1116 - cell  
206-553-0124 - fax  
kawabata.sylvia@epa.gov

Doug Ammon

Sylvia, The PEER FOIA's dated April 5, 2012 ha...

04/26/2012 01:38:06 PM

From: Doug Ammon/DC/USEPA/US  
To: Sylvia Kawabata/R10/USEPA/US@EPA  
Date: 04/26/2012 01:38 PM  
Subject: PEER FOIA

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Sylvia,



The PEER FOIA's dated April 5, 2012 have been consolidated under Request Number HQ-FOI-01158-12 with a Due Date of May 17, 2012 and a fee waiver granted. Please find attached the list of sites for your region for the initial phase. Please let me know as soon as possible if you are unable to produce the requested responsive records by May 16, 2012. We have established a "project site" on the Environmental Science Connector to upload your documents. Please email me the names of people who will need access.

We have contacted the requester and reached agreement that the Agency will initially produce responsive records associated with sites that have been deferred to RCRA or deferred to state cleanup programs from October 1, 2006 through April 18, 2012. We also agreed to have additional conversations with the requester on the scope and timing of producing additional information after the initial production of documents. I do not know at this time whether the requester will agree to narrow the scope but she is at least sensitive to the workload implications.

The following is the information that we believe is responsive:

- Site Decision Form 9100-3 (or an equivalent document)
- Latest scoring sheet relied on for the decision
- Report used as the basis for the "decision document" (e.g, the latest site assessment report)
- RCRA/Superfund Deferral Form (or equivalent)
- OCA Deferral Form (or equivalent)

As for as releasing any of these materials, the 2001 OSWER Directive on "Releasability of Hazard Ranking System (HRS) Documents under the FOIA" provides that determinations are to be made on a case-by-case basis and information *should be provided unless there is foreseeable harm from the release*. Arguably, the deliberative process privilege is less apparent after we have made the "NPL listing decision" by deferring the site to RCRA or to other cleanup authorities. However, in situations where the region can articulate specific foreseeable harm from the release the records (e.g., pending litigation), please identify those records/sites that the region recommends to be withheld. We will need to describe the records that we are withholding in our response to PEER.

Here is the logic used to obtain the site lists via an ad hoc CERCLIS query run against data as of April 18, 2012:

NPL Status =

N (Not on the NPL) or  
R (Removed from the NPL) or  
S (Pre-Proposed Site) or  
W (Withdrawn from the final NPL)

Non-NPL Status =

DN (Deferred to RCRA) or  
DR (Deferred to NRC) or  
OS (OCA: State Lead) or

OT (OCA: Tribal Lead) or  
OF (OCA: Fed Fac Lead) or  
SD (Formal State Deferral)

Latest Completed Action =  
HX (Pre-CERCLIS Screening) or  
PA (Preliminary Assessment) or  
QT (Integrated RV/PA) or  
RX (Fed Fac PA Review) or  
QJ (Integrated RV/SI) or  
SI (Site Inspection) or  
TY (Fed Fac SI Review) or  
SH (Site Inspection Prioritization) or  
OU (Integrated RV/Combined PA/SI) or  
UH (Fed Fac Combined PA/SI Review) or  
NX (Combined PA/SI) or  
OO (Site Reassessment) or  
OY (Integrated RV/ESI) or  
ES (Expanded SI) or  
TZ (Fed Fac ESI Review) or  
SS (ESI/RI) or  
HR (HRS Package)

[In case multiple actions with the same completion date exist at a site, sort the actions in the order presented above and take the action that falls closest to the bottom of the list)

Action Completion Date =  
10/01/2006 through 04/18/2012)

Action First Completion Flag <> E

(action is not coded as an anomaly)

[attachment "FOIA.pdf" deleted by Sylvia Kawabata/R10/USEPA/US] [attachment "Region 10 - 7 Deferred to RCRA or OCA or State Deferral sites with SA actions completed from FY07 thru 04-18-2012.xlsx" deleted by Sylvia Kawabata/R10/USEPA/US]

Douglas Ammon, P.E.

Chief, Site Assessment and Remedy Decisions Branch

Superfund Program U.S. EPA Mail Code 5204P

1200 Pennsylvania Ave. N.W.

Washington DC 20460

703-347-8925

703-603-9104 (fax)